

Potential Legislative Issues – 2003 Session

BRIEFING PAPER

Prepared for the
July 2002 TRANSPORTATION COMMISSION MEETING

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PURPOSE:

To review potential legislative issues and the time table for formalizing agency request legislation for the 2003 session.

ACTION/OUTCOME:

This is an informational briefing on legislative issues agency staff have suggested as possible agency requests and to seek the Commission's views prior to moving any of these issues forward.

BACKGROUND:

State law requires that the Commission review and approve all Departmental requests for legislation. In addition, the Governor's Office has a review process for the development and introduction of agency request legislation. A preview of potential legislative issues was presented to the Governor's office on May 22, 2002.

DISCUSSION:

Prior to each legislative session, Department staff makes suggestions for essential or highly desirable changes in law that would contribute to better operation of the Department. Attached is the list of potential legislative issues developed to date. Legislation with fiscal impact is due in the Governor's Office by September 6, 2002. Legislation without fiscal impact is due by September 30, 2002.

RECOMMENDATION:

None. We will begin the collaborative process of discussing these issues with other agencies and stakeholder groups who might be affected by our proposals so their views and positions can be documented. Formal Commission action on our agency request package will be requested in September.

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**POTENTIAL LEGISLATIVE ISSUES
2003 SESSION**

Washington State Department of Transportation

July 2002

**I. NEW REVENUE, REGIONALISM AND POLICY RELATED
PROPOSALS:**

1. Regional Transportation Improvement District (RTID) bonding authority

We are considering legislation to clarify the bonding authority of RTIDs.

Implementation of E2SSB 6140 (Chapter 56, Laws of 2002) to achieve maximum potential funding will require the legislature to authorize bonds that either directly or indirectly pledge taxes implemented by the RTID through the prescribed planning and voting requirements contained in the regionalism bill. To avoid potential issues regarding the state's debt limitation, the recommended type of authorization is General Obligation/gas tax backed bonds. Debt service on these bonds would first be paid by the gas tax and then the motor vehicle fund would be reimbursed by the regional tax sources. Legislation will be needed to address this issue. The outstanding question is when will it be developed and by whom.

2. Tolls on existing transportation facilities

We are considering legislation to address policy issues associated with the tolling of transportation facilities.

E2SSB 6140 (Chapter 56, Laws of 2002) enables vehicle tolling as part of a regional transportation investment plan on new or reconstructed facilities. The vagueness of this enabling legislation requires clarity of legislative intent and perhaps expansion of the tolling authority. Specifically, questions exist regarding the ability to toll existing facilities that are part of a corridor improvement program but for which funding of all corridor improvements is not immediately provided. For instance, can you toll all I-405 traffic under a phased implementation approach where only a certain section or sections are being improved using state and regional funds? Further, the questions of extending tolling authority to existing facilities that may be negatively impacted by tolling other corridors needs to be addressed. Legislation needs to be developed to address the issues associated with the tolling of existing facilities to ensure all corridor traffic can be tolled to help fund specific project phases. Consideration should also be given to allow the application of tolling to existing facilities located in areas that will be directly affected by the application of corridor tolling.

3. Funding Transportation Demand Management (TDM) Measures through the Regional Transportation Improvement District (RTID).

We are considering legislation to allow the RTID to raise and expend revenue to pay for ongoing operating costs for TDM measures contained in their regional investment plan.

Under current law, the RTID can raise and expend revenue to acquire and pay for TDM investments like: park & ride lots, bus pull-outs and the acquisition of vans and buses as part of their regional transportation investment plan. The law specifically precludes the RTID from financing the ongoing operational costs associated with these capital investments. The RTID should have the flexibility to finance both capital and operational investments as part of their regional investment plan. Legislation would be needed to allow this flexibility.

4. No Smoking on Washington State Ferries

We are considering legislation to prohibit smoking on Washington State Ferries (WSF).

Executive Order 88-06 establishes the Governor's policy on smoking in state facilities. It directs agencies to eliminate smoking in all state facilities and state vehicles in order to provide a smoke free healthful environment for Washington State citizens and employees. RCW 47.56.730 requires that no smoking areas be established on all state ferries. It further authorizes and directs the department to adopt rules to establish and clearly designate areas on all state operated ferries that are expressly reserved for use by non-smokers. This issue may not require legislation to implement but WSF would like to be in a position to proceed with legislation if its necessary to implement this policy consideration.

II. PROJECT DELIVERY RELATED PROPOSALS:

5. Alternative contracting procedures for WSF terminal construction

We are considering legislation to allow WSF to utilize alternative contracting procedures for its terminal construction program.

Under current law, certain state agencies are authorized to utilize alternative public works contracting procedures for projects over \$10 million, including General Contractor/Construction Manager (GC/CM) procedures. It doesn't include WSF as an authorized agency. In anticipation of major improvements and preservation to terminals in Seattle, Mukilteo and Anacortes, WSF believes that the GC/CM procedures provide benefits to the taxpayer in controlling costs while constructing ferry terminal facilities under operating conditions.

6. Surety bonds for mega-projects

We are considering legislation to change the surety bonding requirements for mega-projects.

Current law requires contractors awarded WSDOT construction contracts to provide a surety bond equal to the total amount of the contract price. This is to ensure that if a contractor defaults on the contract, the surety would assume responsibility for making sure the project gets finished. While this has worked well on construction projects we've historically performed in this state, it will likely limit the competition for the construction of mega-projects anticipated to be built if the transportation funding package is approved by the voters in November. Mega-projects are projects whose costs range from hundreds of millions to billions of dollars. Limited competition generally means higher bids. Other states having more experience dealing with the financial constraints associated with building mega projects have implemented different surety requirements for their huge projects. An example is having a 25% surety bond requirement for any project that costs more than \$1 billion. It has been recommended that legislation be developed to change the bonding requirements for mega-projects in a way that provides the state with needed performance security, but doesn't limit the number of potential bidders.

7. Alternative Contracting Procedures – Construction Program

We are considering legislation to allow the department to utilize alternative contracting procedures to assist us in delivering our construction program.

WSDOT is interested in gaining authority to select contractors based on best value for certain high visibility, high impact projects. Similar in concept to that used in the design build process, a best value selection would be based on a combination of price and contractor past performance, quality and approach to completing the project.

WSDOT is also interested in exploring use of a "project alliance" approach on certain projects. Currently being used with success in other countries, alliancing is based on a contract owner (WSDOT) and a contractor and/or designer coming together as a team to deliver a project. Reimbursement to the contractor/designer is based on 100% "open book" on costs, a fixed fee to cover corporate overheads and profit and an equitable sharing of risk and rewards based on meeting agreed to targets including costs.

III. BUSINESS PRACTICES, BUDGET AND EFFICIENCY RELATED PROPOSALS:

8. Providing copies of appraisal documents in property acquisition activities

We are considering legislation to allow the state and affected property owners to exchange appraisal documents in property acquisition cases.

In an effort to reduce costs and speed up the property acquisition process, it has been recommended that legislation be developed to have the state present appraisal documents to the property owner at the time of the offer to purchase. The property owner would, in turn, have to provide an appraisal document to the State within a given timeframe if the value of our offer is considered out of line. This is being viewed as a way of helping both sides come to a proper and quicker decision on the merits of the offers to purchase by sharing more realistic value evidence between the parties early on in the negotiations.

9. Moving and relocation expenses

We are considering legislation to remove the \$10,000 limit the state can provide a business that has been displaced as a result of a public works project.

The relocation assistance program provides for compensation to persons or businesses that are “displaced” as a result of one of our projects. Current law places a \$10,000 limit as the maximum payment for re-establishment expenses for relocating a displaced business. This limit was required by old, and since updated, federal regulation and has not been changed in at least 15 years. Condemnation is disruptive and can be expensive, particularly for small businesses. It is proposed that we develop legislation that would remove the \$10,000 limit and give the department more latitude in establishing a payment maximum that is more in tune with current economic and geographical situations.

10. Collective Bargaining Legislation

We are considering legislation to give WSF the ability to negotiate labor agreements for longer than the current 2-year terms.

WSF would like to investigate the possibility of some targeted changes to current statutes relating to the collective bargaining process for WSF employees. While there are a number of specific provisions that might be worthwhile to focus on, WSF believes there is merit to seeking change to the provision of the statute

mandating two-year agreements. The logic behind this requirement is understandable (coinciding with the biennial budget process), but as a practical matter, the two-year cycle for labor agreements presents difficulties, particularly with eight separate labor agreements that must be negotiated in a compressed time frame each biennium. At a minimum, the parties should have the flexibility to decide the maximum term of the agreement. It has been recommended that legislation be developed to allow that flexibility. Union support would be critical on this issue.

11. Studded tires

We are considering legislation to ban the use of studded tires in the state.

Over the past twenty years, the legislature has debated the issue of studded tires but has never gotten to a point where it could muster enough support to ban their use. The legislature did recently enact a “stud light” bill that phased in the use of lighter weight studs making Washington law consistent with that of Idaho and Oregon. The question on whether the department should propose legislation to ban the use of studded tires has come up again. It has been recommended that the department propose legislation to either ban the use of studs or require the use of an even lighter weight stud, one currently required for use in European countries. This lighter weight stud would reduce rutting by 50% and save about \$5 million a year in damage costs.

12. Seat Belt Tort Liability Reform

We are considering legislation that would allow failure to wear a seat belt to be admissible as evidence in civil actions involving injury claims.

In 1986, the Legislature enacted seat belt laws that require anyone who is operating a vehicle or riding as a passenger to wear a seat belt. It is a traffic infraction for any person not to wear a seat belt. The seat belt statute also provides that a person’s failure to comply with the set belt requirement does not constitute negligence and is not admissible as evidence of negligence in any civil action. Now that failure to wear a seat belt is a primary traffic offense, it has been recommended that legislation be developed to revise the statute that precludes us from entering that fact into evidence during trial.

13. Collision records reporting

We are considering legislation to give the department the responsibility for recording and collecting collision data.

The legislature made a policy decision last year to transfer the responsibility for recording and collecting collision data from the State Patrol to the Department of Transportation. The transfer is supposed to be effective July 1, 2003. The sum of \$1.4 million and 5 FTE's is to be reduced from the WSP's carry-forward balance for 03-05 and a like amount will be added to our fund balance to effectuate this transfer of responsibility. If our budget submittal reflects this transfer of responsibility then legislation will be needed to make the technical changes in current law to indicate it's WSDOT and not WSP who is responsible for doing this.